

Private foundation's self-dealing; legal fees of disqualified person. Payment by a private foundation of legal fees awarded by a court to the counsel for its director-manager, a disqualified person, who had filed suit against the remaining directors to require them to carry on the foundation's charitable program, does not constitute an act of self-dealing.

Advice has been requested whether under the circumstances described below, the payment of legal fees by a private foundation constitutes an act of self-dealing under section 4941 of the Internal Revenue Code of 1954.

A dispute concerning the operation and management of the foundation arose among its directors. This caused the foundation to become inactive and prevented it from carrying out its charitable program. A director, who is a disqualified person because he is a foundation manager, filed suit against the remaining directors to require them to carry out the foundation's charitable program.

The court approved a settlement entered into among the directors which resolved the dispute. This action resulted in a renewal of operations which permitted the foundation to carry out its charitable program. The court awarded legal fees from the foundation to the counsel for the disqualified person. The amount awarded was not excessive.

Section 4941(d)(1)(D) of the Code provides that the term 'self-dealing' means any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to the disqualified person.

Section 4941(d)(2)(E) of the Code provides that except in the case of a Government official, the payment of compensation (and the payment or reimbursement of expenses) by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the private foundation shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

It is a director's responsibility to ensure an efficient means of controlling and managing the foundation. By filing suit to resolve the dispute concerning the operation and management of the foundation, the director in the instant case performed a personal service in carrying out his responsibilities. Since the purpose of the suit was to provide a means for the foundation to renew its operations and carry out its charitable program, the service performed by the director was reasonable and necessary to carry out the exempt purpose of the foundation.

Accordingly, payment of the legal fees by the foundation under the circumstances described does not constitute an act of self-dealing under section 4941 of the Code.